Translating guilt: Identifying leadership liability for mass atrocity crimes
Steer, C.E.

Citation for published version (APA):

General rights
It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations
If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: http://uba.uva.nl/en/contact, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.
The darkest side of humanity is expressed when individuals acting in collectives perpetrate crimes of mass atrocity on entire communities. There is an intuition that the leaders of regimes leading to such atrocities are responsible, but the question faced by international criminal tribunals is whether leadership liability should differ from other kinds of complicity. Debates on modes of liability in ICL have become more and more complex over the last 20 years, and despite the fact that mass atrocity is of a nature quite different from the gang and mafia-type crimes familiar to domestic criminal law systems, international tribunals have nowhere else to turn but domestic criminal law models. This book therefore takes a comparative look at the development of modes of leadership liability in international criminal law, by engaging in a critical study of different domestic models and how these have been translated to the international context. When are the leaders responsible for the horrendous acts that take place under their leadership, and how?
TRANSLATING GUILT

Identifying Leadership Liability for Mass Atrocity Crimes

ACADEMISCH PROEFSCHRIFT

ter verkrijging van de graad van doctor
aan de Universiteit van Amsterdam
op gezag van de Rector Magnificus
prof. dr. D. C. van den Boom

ten overstaan van een door het college voor promoties
ingestelde commissie,
in het openbaar te verdedigen in de Agnietenkapel

op woensdag 17 december 2014, te 10:00 uur

door

Cassandra Elizabeth Steer

geboren te Canberra, Australië
PROMOTIECOMMISSIE

Promotor: Prof. dr. mr. H.G.W. van der Wilt, Universiteit van Amsterdam

Overige leden: Prof. dr. mr. T. Blom, Universiteit van Amsterdam
Prof. dr. K.J. Heller, SOAS University of London
Prof. dr. mr. P. A. Nollkaemper, Universiteit van Amsterdam
Prof. dr. mr. E. van Sliedregt, Vrije Universiteit
Prof. dr. mr. G. Sluiter, Universiteit van Amsterdam

Faculteit: Faculteit der Rechtsgeleerdheid

Cover design: Jakob Hronek, www.teknological.tk

Image credit back cover: Dr Fritz Klein standing over bodies at Bergen Belsen Concentration Camp, courtesy of Colin R. Leech, www.bergenbelsen.co.uk

Printed and bound at University of Amsterdam Repro, November 2014
Acknowledgments

A first book may not be an author's most important, but it's the journey that got me here which is, indeed important. Above my desk I have a quote from Carl Jung, to which I refer often: 'The goal is important only as an idea. The essential thing is the opus which leads to the goal: that is the goal of a lifetime.' For their contribution to this opus I am grateful to a number of people.

My promotor and mentor, Prof. Harmen van der Wilt, whose guidance was like a lighthouse, regardless of whether the skies were clear or dark and stormy. Steady, even, always truthful, ever inspiring, and truly focused. Thank you for your commitment, your insights, and for your generosity with your time, particularly in my final months of writing.

I was supported a great deal in the comparative research I undertook in various countries by a number of generous people. In Germany at the Institut für Kriminalwissenschaften at the Georg August Universität in Göttingen I was welcomed and supported by Alexander Heinze, and am grateful also to Prof. Kai Ambos for his guidance. In the US at Cornell Law School Jens Ohlin provided hours of investigative debate and inspiring exchange of thoughts. I am indebted to him for his philosophical contributions and his all-round support. In Argentina at the Universidad Torcuato Di Tella in Buenos Aires I was welcomed by a warm community of intellectuals, and was supported in particular by Alejandro Chehtman, Hernán Gullco and Marcello Ferrante. I appreciate all their patience with my stumbling Spanish, and their extremely useful guidance on Argentine law. In Canada I was made to feel especially welcome in what I can only describe as an academic family at McGill Faculty of Law in Montreal. There Frédéric Mégret and Nandini Ramanujam took wonderful care of me as a guest of the Centre of Human Rights and Legal Pluralism. I look forward very much to the opportunity I have been given to return to the faculty at the Institute of Air and Space Law. I am also grateful to the Hon. Patrick Healy, judge on the Court of Quebec and Professor of criminal law at McGill, for his time, advice and candid views. And finally at the University of British Columbia in Vancouver I was treated to rich and conceptually essential debates with James Stewart, to whom I am grateful for his time.

I am also grateful to the Fulbright Association of the Netherlands, and to the University of British Columbia Mobility Award, for the generous funds contributed to my research travels.

My thanks to the committee members, Professors Tom Blom, Kevin Jon Heller, André Nollkaemper, Elies van Sliedregt and Göran Sluiter.

In this opus there has been a veritable team of wise and supportive people, without whom I would have completed this journey battered, bruised and exhausted, rather than

1From The Psychology of Transference, para 400.
calm, confident and elated:

To the men of Cabero Stediki, Rory Kilmartin and Benjamin Dives, I am honoured to be the recipient of such a sophisticated listening and unbending support, and just as honoured to contribute to each of you as we ensure each other’s success in our respective life goals.

To Alain Youell, I am blessed to have your wisdom and guidance in raising the level of growth and awareness in each of life’s challenges to one of beauty and importance.

To my touchstone Bex Hronek, I am so blessed to have you by my side, and to know there is no question we cannot ask each other. To Jakob Hronek, I am grateful for your expert design work to add the final note of originality to this book.

To my paranymphs Isabelle Swerissen and Yedan Li, thank you for making the last phase smooth and delightful, and for all your effort, time and celebratory energy.

To Kees Drabbe, I am indebted to you for your speedy translation work and for yours and Nettv’s omnipresent support.

To Kathryn Greenman, thank you for your ever insightful and incredibly constructive critique.

To the women of Stepping Out, the women’s network of junior academics at the Universiteit van Amsterdam Faculty of Law, thank you for being such an amazing network of inspiring, elegant, intelligent and powerful lawyers, academics, colleagues and friends.

To my parents and brothers, thank you for your endless belief in me, for your encouragement for me to follow my path on the other side of the world, even when this meant missing important moments in your lives, and for your role in my journey as an international lawyer and academic. This book is dedicated to you, my family. My success is your success.

And finally to my fiancé, Sebastien, thank you for your patience, for always standing beside me, always encouraging me, and for tolerating the love affair I was having in the creation of this book, which took me away from you so many times.
List of Abbreviations

**BGH** *Bundesgerichtshof* (German Federal Court of Justice)

**BiH** (State Court of) Bosnia Herzegovina

**CJM** *Código de Justicia Militar*, (Argentine Military Code of Justice)

**DRC** Democratic Republic of Congo

**ECCC** Extraordinary Chambers in the Courts of Cambodia

**ECHR** European Convention on the Protection of Human Rights and Fundamental Freedoms

**IACHR** Inter-American Court of Human Rights

**ICC** International Criminal Court

**ICC** International Covenant on Civil and Political Rights

**ICJ** International Court of Justice

**ICL** International Criminal Law

**ICRC** International Committee for the Red Cross

**ICTR** International Criminal Tribunal for Rwanda

**ICTY** International Criminal Tribunal for Former Yugoslavia

**IHL** International Humanitarian Law

**ILC** (United Nations) International Law Commission

**IMT** International Military Tribunal

**ISIS** Islamic State of Iraq and al-Sham

**JCE** Joint Criminal Enterprise

**MCP** Model Penal Code (United States of America)
OTP  Office of the Prosecutor
RUF  Revolutionary United Front (Sierra Leone)
SCSL  Special Court for Sierra Leone
StGB  Strafgesetzbuch, (German criminal code)
STL  Special Tribunal for Lebanon
UN  United Nations
US  United States of America
WCA  War Crimes Act 2000 (Canada)
## Contents

Acknowledgments ........................................... i

List of Abbreviations ................................... iii

List of Authorities ................................... xiii

1. Introduction ........................................... 1
   1.1. Background: The Problem of Modes of Liability in International Criminal Law ........................................... 1
   1.2. Central Questions ........................................... 3
   1.3. Design and Scope of the Enquiry ........................................... 3
   1.4. Outline ........................................... 6

I. Laying the Foundations ........................................... 9

2. Putting the Leaders of Mass Atrocity on Trial ........................................... 11
   2.1. Translating From the Collective to the Individual ........................................... 14
       2.1.1. Individual versus Collective Guilt ........................................... 15
       2.1.2. Individual versus Collective Agency ........................................... 17
       2.1.3. Deliberative Structures and Those Most Responsible ........................................... 19
       2.1.4. Why the Leaders? ........................................... 21
   2.2. Efficacy and Symbolism: The Aspirations of International Criminal Law ........................................... 23
       2.2.1. Competing Paradigms ........................................... 24
       2.2.2. Symbolism: History Writing and Truth-Telling ........................................... 29
       2.2.3. Leadership Liability as a Prosecutorial Policy ........................................... 31
   2.3. Fairness and Justice: The Requirements of International Criminal Law ........................................... 35
       2.3.1. Fairness and the Principle of Legality ........................................... 36
       2.3.2. Fairness and the Principle of Culpability ........................................... 40
       2.3.3. Justice for Victims and for Defendants ........................................... 42
       2.3.4. Justice and Procedural versus Substantive Truth ........................................... 44
   2.4. Theories of Punishment: The Functions of International Criminal Law ........................................... 47
       2.4.1. Retribution ........................................... 49
Contents

2.4.2. Prevention ................................................................. 51
2.4.3. Norm Expression ......................................................... 55
2.4.4. A Multitude of Functions .............................................. 57
2.5. Interpreting Modes of Liability on the International Plane: Is There a Choice? .............................................. 60

3. A Comparative Theory of International Criminal Law 63
   3.1. International Criminal Law as Translation: From the Domestic to the International .................................................. 65
       3.1.1. Comparative Law as a Tool of Analysis ................................. 69
       3.1.2. Legal Traditions ......................................................... 71
       3.1.3. Legal Transplants ....................................................... 73
       3.1.4. Legal Patchworking ...................................................... 77
   3.2. International Criminal Law as Process ..................................... 78
       3.2.1. The Communication Model of Lawmaking .............................. 80
       3.2.2. Participants as Law-Makers ........................................... 83
   3.3. International Criminal Law as Policy ....................................... 86
       3.3.1. International Law as Policy .......................................... 86
       3.3.2. Participants as Policy-Makers and Law-Applicants .................. 88
       3.3.3. The Policy Choice of Modes of Liability ............................ 91
   3.4. The Problem of Ambiguity ................................................ 92
   3.5. Mapping Tools for a Comparative Analysis ................................ 95
   3.6. A Comparative Law Approach to Resolving the Search for Modes of Leadership Liability ................................................ 98

4. The Requirements of a Comparative Law Method 101
   4.1. Functionalism .............................................................. 102
   4.2. Selection of Jurisdictions ................................................ 104
       4.2.1. Justification of the Selection ........................................ 105
       4.2.2. Law-Making and Law-Applying in the Jurisdictions Considered 108
   4.3. Terminology: The Problems of Translation ................................ 108
       4.3.1. Unitary and Differentiated Systems ................................... 109
       4.3.2. Complicity ................................................................. 114
       4.3.3. Parties to a Crime ....................................................... 116
       4.3.4. Guilt ....................................................................... 117
       4.3.5. Subjectivity and Objectivity as Approaches to Liability .......... 123
Contents

II. A Comparative Study of Modes of Liability 127

5. Subjectivity Reflected in the Common Law Tradition 129
   5.1. The Common Law Tradition: A Context .............................. 130
   5.2. The Old Common Law Modes of Liability ............................ 135
   5.3. United States of America - Liability for the Acts of Others .......... 139
      5.3.1. Subjectivity ............................................. 141
      5.3.2. Vicarious or Derivative Liability for Parties to a Crime ......... 142
      5.3.3. Mens rea and Actus reus Requirements for Accomplice Liability .... 146
      5.3.4. Extended Liability: Further Crimes Committed by Others ........ 148
      5.3.5. Conspiracy: Expanding the Common Law Solution to Group Crimes 151
      5.3.6. Summary .............................................. 165
   5.4. Canada - Moral Blameworthiness and the Importance of Stigma .......... 168
      5.4.1. ‘Principles of Fundamental Justice’ and Constitutional Limits on Criminal Liability ............................................. 169
      5.4.2. Subjectivity and Moral Innocence ................................ 171
      5.4.3. Standards of Fault for Party Liability ............................. 173
      5.4.4. Basic Party Liability .................................... 176
      5.4.5. Constructive Extended Liability ................................ 183
      5.4.6. Conspiracy: The Limited Common Law Solution to Group Crimes 188
      5.4.7. Other Inchoate Crimes: Filling the Gaps of Liability .............. 191
      5.4.8. Application of Canadian Modes of Liability to the War Crimes Act 193
      5.4.9. Summary .............................................. 200
   5.5. Summary of the Common Law Tradition: Legal Culture and Policy Choices203

6. Objectivity Reflected in the Civil Law Tradition 207
   6.1. The Civil Law Tradition: A Context ................................. 208
      6.1.1. A Normative Theory of Culpability ............................ 213
   6.2. Germany: Responsibility For Control Over the Act and Control Over an Organisation ......................................................... 215
      6.2.1. The Importance of Doctrine .................................. 217
      6.2.2. Culpability as Blameworthiness ................................ 219
      6.2.3. The German System of Modes of Liability ....................... 221
      6.2.4. Objectivity and Control Over the Crime ........................ 225
      6.2.5. Roxin’s Theory of Organisationsherrschaft ........................ 232
      6.2.6. Summary .............................................. 237
   6.3. Argentina: The German Theory Applied to Leaders of Organised Mass Atrocity .............................................................. 239
      6.3.1. Legal Transplants in Argentine Law ............................. 240
Contents

6.3.2. Objectivity and Control Over the Crime .................................. 243
6.3.3. Modes of Individual Criminal Liability ................................. 245
6.3.4. Autoría Mediata: Indirect Perpetration ................................. 250
6.3.5. The ‘Dirty War’ and the Criminal Responsibility of its Leaders .. 254
6.3.6. Autoría Mediata in Subsequent Case Law ............................. 266
6.3.7. The Impact of Argentine Case Law in the Latin American Region . 269
6.3.8. Summary .............................................................................. 272
6.4. Summary of the Civil Law Tradition: Legal Culture and Policy Choices . 274

7. Shifting Trends in International Tribunals ................................. 277
7.1. Which Tradition? The Context of ICL ........................................ 278
7.2. Conspiracy-Complicity: Prevalence of the Subjective Approach .... 281
  7.2.1. The International Military Tribunal at Nuremberg .............. 281
  7.2.2. The Tokyo International Military Tribunal ......................... 288
  7.2.3. Military Trials Under Control Council Law No. 10 .............. 289
  7.2.4. After the Second World War Trials: Rejection of Conspiracy ... 290
7.3. Command and Superior Responsibility: Leadership Liability as Omission . 293
  7.3.1. Command Responsibility .................................................. 297
  7.3.2. Superior Responsibility ................................................... 300
7.4. Planning, Instigating and Ordering: Forms of Encouragement ....... 303
  7.4.1. Planning ........................................................................... 304
  7.4.2. Instigating/Soliciting/Inducing .......................................... 307
  7.4.3. Ordering ........................................................................... 309
7.5. Aiding and Abetting: Hidden Controversies ............................ 311
  7.5.1. Complicity as Secondary Assistance .................................. 312
  7.5.2. Aiding and Abetting as a Catch-All for Leadership Liability . 315
7.6. Joint Criminal Enterprise: Extended and Constructive Liability ... 319
  7.6.1. The Inception of a New Mode of Liability ......................... 319
  7.6.2. Three Forms of JCE ......................................................... 325
  7.6.3. JCE Applied by Other Tribunals ....................................... 327
  7.6.4. The Reification of JCE ...................................................... 337
7.7. Co-Perpetration: Towards an Objective Approach .................. 340
  7.7.1. Co-perpetration at the Ad-Hoc Tribunals ........................... 342
  7.7.2. Co-Perpetration at the ICC: Control Over the Crime .......... 345
7.8. Indirect Perpetration/Perpetration by Means: A Normative Differentiation 350
  7.8.1. A New Mode of Liability on the International Plane .......... 350
  7.8.2. Perpetration By Means of an Organisation ......................... 352
Contents

7.8.3. Towards a Reification of Perpetration by Means of an Organisation 356
7.9. Indirect Co-Perpetration by Means of an Organisation: Extended Liability 360
7.10. The Question of Differentiation Between Parties to a Crime . . . . . . . . 362
   7.10.1. Unitary or descriptively differentiated at the ad-hoc tribunals . . . 362
   7.10.2. Normatively differentiated at the ICC . . . . . . . . . . . . . . . . 365
7.11. Policy and Tradition: The Influence of Participants on the Choice of Modes
      of Liability . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 369

III. What Can Be Learned From A Comparative Lens 371

8. Analysing the Processes in Light of the Goals: Which Factors Have
   Led to the Development of Modes of Liability? 373
   8.1. Mapping the Processes and Factors in the Common Law Tradition . . . . 374
      8.1.1. The Relationship Between the Character of Criminal Trials and a
              System of Liability . . . . . . . . . . . . . . . . . . . . . . . . . . . . 374
      8.1.2. Subjectivity: Conspiracy and Common Intention . . . . . . . . . . . 376
      8.1.3. Limits on Extended Liability . . . . . . . . . . . . . . . . . . . . . . 378
      8.1.4. Vicarious Liability . . . . . . . . . . . . . . . . . . . . . . . . . . . . 380
   8.2. Mapping the Processes and Factors in the Civil Law Tradition . . . . . . 382
      8.2.1. The Relationship Between the Character of Criminal Trials and a
              System of Liability . . . . . . . . . . . . . . . . . . . . . . . . . . . . 382
      8.2.2. Objectivity: Normative Differentiation and Derivative Liability . . 384
      8.2.3. Indirect Perpetration and Collective Atrocity . . . . . . . . . . . . 386
   8.3. Mapping the Processes and Factors in the International Tribunals . . . . 387
      8.3.1. The Relationship Between the Character of International Criminal
              Trials and a System of Liability . . . . . . . . . . . . . . . . . . . . . 388
      8.3.2. Policy Shifts . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 391
      8.3.3. The Influence of Participants on the Shifts Between Subjectivity
              and Objectivity . . . . . . . . . . . . . . . . . . . . . . . . . . . . 394
      8.3.4. Vicarious or Derivative Liability? . . . . . . . . . . . . . . . . . . . 396
      8.3.5. The Relationship Between Functions of Punishment and Liability . 398
   8.4. Reversing the Traditional Doctrine of Sources: How the Subsidiary Sources
        Have Become Primary . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 400
      8.4.1. The Rome Statute as an Internally Referencing Source . . . . . . . 402
      8.4.2. Treaties as Primary Sources? . . . . . . . . . . . . . . . . . . . . . 402
      8.4.3. The Limits of Custom and Principles of International Law . . . . . 403
      8.4.4. The Relationship Between General Principles and Domestic Law . 405
8.4.5. Judicial Decisions as Evidence of Custom, General Principles, or a Source Unto Themselves ........................................... 407
8.4.6. Scholars as Participants and Doctrine as a Source ................... 409
8.4.7. A Different Hierarchy of Sources ....................................... 410
8.5. Are Modes of Liability in International Criminal Law Sui Generis? ... 412

9. In Defence of a Normatively Differentiated System 417

9.1. Liability as a Policy Choice ................................................. 418
9.1.1. Policy Expressed at the International Tribunals .................... 419
9.1.2. The Relationship Between the Goals and Functions of International Criminal Law and a System of Liability .................. 421
9.2. Objectivity as a Doctrinal Choice: A Better Fit for the Context of ICL . 424
9.2.1. A Normative Theory of Culpability .................................. 429
9.2.2. Deliberative Structure as a Basis for Distributing Liability ........ 432
9.3. Sentencing or Qualification: Should Modes of Liability Do the Work of Differentiation? ................................................. 434
9.4. Fair Labelling ............................................................... 439
9.5. Assessing the Existing Modes of Leadership Liability Against the Criteria 442
9.5.1. JCE: the Risk of Guilt by Association ................................. 442
9.5.2. Perpetration By Means of an Organisation ........................... 446
9.5.3. Indirect Co-Perpetration by Means of an Organisation: Extended Liability ................................................................. 449
9.5.4. Derivative Modes of Liability ........................................... 452
9.6. Identifying A System of Leadership Liability ............................ 455

10. Conclusion: Translating the Guilt of Leaders of Mass Atrocity 459

10.1. Layers of Translation ....................................................... 459
10.2. Applying a Comparative Theory: Beyond Legal Transplants, Toward Legal Patchworking ............................................ 463
10.2.1. The Descriptive Application of a Comparative Theory: Mapping the Patchworking Process .................................... 463
10.2.2. The Normative Application of a Comparative Theory: Strengthening the Patchworking Process .................................. 466
10.3. Understanding the Role of Policy in the Development of a System of Liability ................................................................. 470
10.4. Fulfilling the Criteria for the Most Appropriate System of Liability . 473
10.5. Who Would You Rather Dine With? The Mastermind or the Executioner 475

A. Appendices 479

A.1. Modes of Liability Under the Charter of the IMT at Nuremberg ........ 479
A.2. Modes of Liability Under the Model Penal Code of the US (not applied in most states of the US) ........................................... 480
A.3. Modes Of Liability Under The Canadian Criminal Code ......................... 482
  A.3.1. Diagram Of Hierarchical Relationship Between The Old Common Law Modes Of Liability (No Longer Applied) ..................... 485
A.4. Modes Of Liability Under The German Strafgesetzbuch ....................... 486
  A.4.1. Diagram Of Hierarchical Relationship Between German Modes Of Liability ................................................................. 488
A.5. Modes of Liability Under the Argentine Codigo Penal .......................... 489
  A.5.1. Diagram of Hierarchical Relationship Between the Argentine Modes of Liability ................................................................. 490
A.6. Modes of Liability Under the Rome Statute ........................................ 491

Full Summary ........................................................................... 493

Nederlandse Samenvatting ...................................................... 509

Bibliography ............................................................................ 529
List of Authorities

LIST OF INTERNATIONAL INSTRUMENTS

Statutes of International Tribunals

- Allied Control Council Law No 10 1945
- Charter of the International Military Tribunal for the Far East 1946
- Charter of the International Military Tribunal at Nuremburg 1945
- Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea 2004
- Rules of Procedure and Evidence of the International Criminal Court 2002
- Statute of the International Criminal Court 1998
- Statute of the Special Court for Sierra Leone 2000
- Statute of the International Criminal Tribunal for Rwanda 1994
- Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia 1993
- Statute of the International Court of Justice 1945
- Statute of the Special Tribunal for Lebanon 2007
- UNTAET Regulation on the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences 2000
List of Authorities

International Treaties

- American Convention on Human Rights 1969, B-32 (hereinafter ACHR)
- Convention Respecting the Laws and Customs of War on Land 1907, T.S. No. 539 (hereinafter Fourth Hague Convention)
- European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, ETS 005 (hereinafter ECHR)
- International Covenant on Civil and Political Rights 1966, 999 UNTS 171 (hereinafter ICCPR)
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (signed 8 June 1977, entered into force 7 December 1978)
- United Nations Convention Relating to the Status of Refugees 1951, T.S. No. 6 (hereinafter UN Refugee Convention)
- Vienna Convention on the Law of Treaties 1969, 1155 UNTS 331 (hereinafter VCLT)

Resolutions of International Organisations


LIST OF DOMESTIC LEGISLATION

**Argentina**

- Codigo de Justicia Militar 1951 (hereinafter CJM)
- Codigo Penal de la Nacion Argentina 1984 (hereinafter Codigo Penal)
- Convencion Nacional Constituyente de 1994 1994 (hereinafter Constitución Nacional de Argentina)
- Documento Final de la Junta Militar sobre la Guerra contra el Subversion y el Terrorismo 1983 (hereinafter Documento Final)
- Enmiendas Codigo de Justicia Militar 1984 (hereinafter CJM Amended)
- Ley de Obedencia Debida 1987 (hereinafter Obedencia Debida)
- Ley de Pacificación Nacional 1983 (hereinafter Self-Amnesty Law)
- Ley de Punto Final 1986 (hereinafter Punto Final)
- Decláranse insanablemente nulas las Leyes Nros 23.492 y 23.521. 2003 (hereinafter Law Revoking Punto Final)
List of Authorities

Canada

- Bill C-45: An Act to Amend the Criminal Code (Criminal Liability of Organisations) 2003 (hereinafter Bill C-45)
- Canadian Charter of Rights and Freedoms 1985 (hereinafter Charter)
- Crimes Against Humanity and War Crimes Act 2000 (hereinafter War Crimes Act)
- Criminal Code of Canada 1985 (hereinafter Criminal Code)
- Interpretation Act 1985 (hereinafter Interpretation Act)

Germany

- Grundgezets 1949 (hereinafter Grundgezets)
- Strafgeztesbuch 1870 (hereinafter StGB)

USA

- Instructions for the Government of Armies of the United States in the Field 1863 (hereinafter Lieber Code)
- Model Penal Code 1962 (hereinafter MPC)
- United States Code (hereinafter U.S.C)
LIST OF CASES

**International Tribunals**

**Military Tribunals Under Control Council Law No. 10**


- *United States v Karl Brandt et al* (1946) II Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No 10 (Military Tribunal of the United States at Nuremberg)

- *The Dachau Concentration Camp Trial, Trial of Martin Gottfried Weiss and Thirty-Nine Others* (1945) XVI Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No 10 5 (General Military Government Court of the United States Zone, Germany)

- *United States v Krauch et al* (1952) 8 Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No 10 (Military Tribunal of the United States at Nuremberg, Military Tribunal IV)

- *The Trial of Fearstein and others* [1946] Proceedings of a War Crimes Tribunal at Hamburg

- *Hoelzer et al D2474*, [1946] RCAF Binder 181.009

- *Trial of Jepsen and others* [1946] Proceedings of a War Crimes Tribunal at Luneberg, Germany (War Crimes Tribunal at Luneberg)

- *USA v Wilhelm von Leeb et al* [1948] Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No 10 (Military Tribunal of the United States at Nuremberg)

- *USA v Wilhelm List et al* [1948] Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No 10 (Military Tribunal of the United States at Nuremberg)

 xvii
List of Authorities


- *The United States of America v Otto Ohlenforf et al* (1951) 4 Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No 10 3 (Military Tribunal of the United States at Nuremberg, Military Tribunal IV)

- *USA v Pohl et al* [1947] Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No 10 (Military Tribunal of the United States at Nuremberg)

- *The Government Commissioner v Herman Roehling and others* (1946) XIV Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No 10 68 (General Tribunal of the Military Government for the French Zone of Occupation in Germany)

- *Trial of Werne Rohde and Eight others* (1946) V Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No 10 56 (British Military Court at Wupertal)

- *Trial of Otto Sandrock and Three Others* (1945) 1 UN War Crimes Commission 35 (British Military Court for the Trial of War Criminals)

- *Trial of Franz Schonfeld and others* (1946) XI UN War Crimes Commission 68 (British Military Court at Essen)


---

**International Criminal Tribunal for Former Yugoslavia**

- *The Prosecutor v Zlatko Alekovski, Appeal Judgment* IT-95-14/1

- *The Prosecutor v Milan Babić, Sentencing Judgment* IT-03-72-S

- *The Prosecutor v Tihomir Blaškić, Trial Judgment* IT-95-14/1-T
- The Prosecutor v Tihomir Blaškić, Appeal Judgment IT-95-14-A
- Decision on Form of Further Amended Indictment and Prosecution Application to Amend, Brđanin and Talić IT-99-36
- Decision on Interlocutory Appeal, Brđanin and Talić IT-99-36-A
- The Prosecutor v Brđanin and Talić, Decision on Provisional Release IT-99-36-T
- The Prosecutor v Brđanin and Talić, Trial Judgment IT-99-36
- The Prosecutor v Brđanin and Talić, Appeal Judgment IT-99-36
- The Prosecutor v Delalić et al, Trial Judgment IT-96-21-T
- The Prosecutor v Delalić et al, Decision on Zdravko Mucić’s Motion for the Exclusion of Evidence IT-96-21-T
- The Prosecutor v Rasim Delić, Trial Judgment IT-04-83-T
- The Prosecutor v Erdemović, Sentencing Judgment IT-96-22-T
- The Prosecutor v Erdemović, Appeal Judgment IT-96-22-A
- The Prosecutor v Furundžija, Trial Judgment IT-95-17/1-T
- The Prosecutor v Hadžihasanović, Appeal Judgment IT-01-47-A
- The Prosecutor v Halilović, Appeal Judgment IT-01-48
- The Prosecutor v Dario Kordić and Mario Čerkez, Trial Judgment IT-95-14/T-2
- The Prosecutor v Momčilo Krajišnik Trial Judgment IT-00-39
- The Prosecutor v Milorad Krnajelac, Appeal Judgment IT-97-25-A
- The Prosecutor v Radislav Krstić Trial Judgment IT-98-33
- The Prosecutor v Radislav Krstić, Appeal Judgment IT-98-33-A
- The Prosecutor v Zoran Kupreškić et al, Trial Judgment IT-95-15/T
- The Prosecutor v Miroslav Kvočka etal, Trial Judgment IT-98-30-1/T
- The Prosecutor v Miroslav Kvočka etal, Appeal Judgment IT-98-30-1/A
- The Prosecutor v Milan Lukić & Sredoje Lukić, Trial Judgment IT-98-32/1
- The Prosecutor v Slobodan Milosević, Second Amended Indictment, ‘Croatia’ IT-02-54
- The Prosecutor v Milan Milutinović, Judgment IT-05-87
- The Prosecutor v Mucić et al, Appeal Judgment IT-96-21-A
List of Authorities

- The Prosecutor v Nikolić, Sentencing Decision IT-94-2-S
- The Prosecutor v Milan Milutinović and Dragoljub Ojdanić, Decision on Dragoljub Ojdanić’s Motion Challenging Jurisdiction — Joint Criminal Enterprise IT-99-37-AR72
- The Prosecutor v Milan Milutinović and Dragoljub Ojdanić, Decision on Dragoljub Ojdanić’s Motion Challenging Jurisdiction — Indirect Co-Perpetration IT-05-87-PT
- The Prosecutor v Naser Orić, Trial Judgment IT-03-68-T
- The Prosecutor v Momčilo Perišić, Trial Judgment IT-04-81-T
- The Prosecutor v Momčilo Perišić, Appeal Judgment IT-04-81-A
- Prosecutor v Nikola Sainović, Nebojsa Pavković, Vladimir Lazarević and Sreten Lukić, Appeals Judgment IT-05-87-A
- The Prosecutor v Milan Simić, Trial Judgment IT-95-9/2
- The Prosecutor v Vojislav Šešelj, Decision on Defence Motion for Disqualification of Judge Frederik Harhoff and Report to the Vice-President IT-03-67-T
- The Prosecutor v Milomir Stakić, Trial Judgment IT-97-24-T
- The Prosecutor v Milomir Stakić, Appeals Judgment IT-97-24-A
- The Prosecutor v Dusko Tadić, Appeals Judgment IT-94-1-A
- The Prosecutor v Dusko Tadić, Decision on the Prosecutor’s Motion for Protective Measures for Victims and Witnesses IT-94-1-A
- The Prosecutor v Dusko Tadić, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction IT-94-1-A
- The Prosecutor v Mitar Vasiljević, Appeals Judgment IT-98-32-A

International Criminal Tribunal for Rwanda

- The Prosecutor v Akayesu, Trial Judgment ICTR-96-4-T
- The Prosecutor v Nahimana, Barayagwiza and Ngeze, Trial Judgment ICTR-99-52-T
- The Prosecutor v Sylvestre Gacumbitsi, Appeal Judgment ICTR-2001-64-A
- The Prosecutor v Jean Kambanda ICTR-97-23
- The Prosecutor v Jean de Dieu Kambanda, Trial Judgment ICTR-95-54A-T
- Joseph Kanyabashi v The Prosecutor ICTR-96-15-A
- The Prosecutor v Édouard Karemera and Matthieu Ndirumpate, Trial Judgment ICTR-98-44-I
- The Prosecutor v Kayishema and Ruzindana, Trial Judgment ICTR-95-1
- The Prosecutor v Kayishema and Ruzindana, Appeal Judgment ICTR-95-1-A
- The Prosecutor v Alfred Musema, Trial Judgment ICTR-96-13
- The Prosecutor v Ndindabahizi, Trial Judgment ICTR-2001-74
- The Prosecutor v Ntakirutimana and Ntakirutimana, Appeals Judgment ICTR-96-10-A
- Joseph Nzirorera et al v The Prosecutor, Decision on Jurisdictional Appeals: Joint Criminal Enterprise ICTR-98-44-AR72.5
- The Prosecutor v Rwamakuba, Decision on Interlocutory Appeal Regarding Application of Joint Criminal Enterprise to the Crime of Genocide ICTR-98-44-AR72.4
- The Prosecutor v Aloys Simba, Trial Judgment ICTR-01-76-T
- The Prosecutor v Semanza, Trial Judgment ICTR-97-20-T
- The Prosecutor v Athanase Seromba, Appeal Judgment ICTR-2001-66-A

Special Court for Sierra Leone

- The Prosecutor v Brima, Kmar a and Kanu, Further Amended Consolidated Indictment SCSL-2004-16-PT
- The Prosecutor v Brima, Kmar a and Kanu, Decision on Motions for Judgment of Acquittal pursuant to Rule 98 SCSL-2004-16-T
- The Prosecutor v Brima, Kmar a and Kanu, Sentencing Judgment SCSL-04-16-T-624
- The Prosecutor v Kallon and Kamara, Decision on Challenge to Jurisdiction: Lome Accord Amnesty SCSL-2004-15-AR72(E)
- The Prosecutor v Koroma, Indictment SCSL-2003-03-I
- The Prosecutor v Norman, Fodana and Kondewa, Amended Consolidated Indictment SCSL-2004-14-PT
- The Prosecutor v Norman, Fodana and Kondewa, Appeal Judgment SCSL-2004-14-A
- The Prosecutor v Sesay, Kallon and Ghao, Appeal Judgment SCSL-04-15-A
List of Authorities

- The Prosecutor v Charles Ghankay Taylor SCSL-03-01-T
- The Prosecutor v Charles Ghankay Taylor, Appeal Judgment SCSL-03-01-A
- The Prosecutor v Charles Ghankay Taylor, Indictment SCSL-03-01-PT
- The Prosecutor v Charles Ghankay Taylor, Sentencing Judgment SCSL-03-01-T

International Criminal Court

- The Prosecutor v Omar Hassan Ahmad Al Bashir, Second Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir ICC-02/05-01/09
- Public Redacted Version of Prosecutor’s Application for Warrant of Arrest under Art 58 ICC-02/05-157
- The Prosecutor v Banda and Jerbo, Corrigendum of the Decision on the Confirmation of Charges ICC-02/05-03/09-121-Conf-Corr
- The Prosecutor v Jean-Pierre Bemba Gombo, Decision on the Confirmation of Charges ICC-01/05-01/08
- Prosecutor v Mathieu Ngudjolo Chui ICC-01/04-02/12
- Prosecutor v Mathieu Ngudjolo Chui, Decision on the Evidence and Information Provided by the Prosecution for the Issuance of a Warrant of Arrest ICC-01/04-02/07
- Prosecutor v Ahmad Muhammad Harun (“Ahmad Harun”), Warrant of Arrest ICC-02/05-01/07
- The Prosecutor v Germain Katanga, Trial Judgment ICC-01/04-01/07
- The Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui, Decision on the Confirmation of Charges ICC-01/04-01/07
- The Prosecutor v Germain Katanga, Decision on the evidence and Information provided by the Prosecution for the Issuance of a Warrant of Arrest ICC-01/04-02/07
- The Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui, Decision on the Implementation of Regulation 55 of the Regulations of the Court and Severing the Charges Against the Accused Persons ICC-01/04-01/07
- The Prosecutor v Germain Katanga, Décision Relatif a la Peine ICC-01/04-01/07
- Prosecutor v Thomas Lubanga Dyilo, Decision on the Confirmation of Charges ICC-01/01-01/06-803

- Prosecutor v Thomas Lubanga Dyilo ICC-01/01-01/06

- Prosecutor v Thomas Lubanga Dyilo, Decision Regarding the Practices Used to Prepare and Familiarise Witnesses for Giving Testimony at Trial ICC-01/01-01/06

- Prosecutor v Francis Kirimi Muthaura and Uhuru Muigai Kenyatta, Decision on the Confirmation of Charges ICC-01/01/09-02/11

- Prosecutor v William Samoei Ruto and Joshaa Arap Sang, Decision on the Confirmation of Charges ICC-01/01/09-01/11

**Extraordinary Chambers in the Court of Cambodia**

- Kaing Guek Eav alias Duch, Trial Judgment 001/18-07-2007/ECCC/TC


- Ieng Thirith, Ieng Sary and Kheiu Samphan, Decision on the Appeals Against the Investigating Judges Order on Joint Criminal Enterprise 002/19-09-2007-ECCC/OICJ (PTC38)

- Nuon Chea, Ieng Thirith, Ieng Sary and Kheiu Samphan, Decision on the Application of Joint Criminal Enterprise 002/19-09-2007-ECCC/TC

- Iang Sary’s Motion to Disqualify Professor Antonio Cassese and Selected Members of the Board of Editors and Editorial Committee of the Journal of International Criminal Justice From Submitting a Written Amicus Curiae Brief on the Issue of Joint Criminal Enterprise D99/3118

**Other International Tribunals**

- Almonacid et al v Chile, Preliminary Objections Merits, Reparations, and Costs No. 154, [2006] Inter-American Court of Human Rights Ser C


- Barrios Altos v Peru No. 75, [2001] Inter-American Court of Human Rights Ser C
List of Authorities

- La Cantuta v Peru No. 162, [2006] Inter-American Court of Human Rights Ser C
- Israel v Demjanjuk Criminal Appeal No. 347/88, [1993] Supreme Court of Israel
- Gelman v Uruguay No. 221, [2011] Inter-American Court of Human Rights Ser C
- Gomes Lund et al (Arauquita Guerrilla) v Brazil Preliminary Objections Merits, Reparations, and Costs No. 219, [2010] Inter-American Court of Human Rights Ser C
- Nicaragua v United States [1986] ICJ Reports (1986) 98 (International Court of Justice)
- Judgment of the International Military Tribunal [1945] International Military Tribunal at Nuremberg
- Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging [2011] Special Tribunal for Lebanon, Appeals Chamber
- Velasquez Rodriguez Case (1988) No. 4 Inter-American Court of Human Rights Ser C
- Trial of General Tomoyuki Yamashita 21, (1945) 1 Law Reports of Trials of War Criminals IV

Domestic Tribunals

Argentina

- Causa incoada en virtud del decreto 280/84 del Poder Ejecutivo Nacional Causa 547, [1987] Corte Suprema de Justicia de la Nación
- Sentencia del Juicio a las Juntas [1985] Cámara Nacional de Apelaciones en lo Criminal y Correccional Federal de Buenos Aires
- Arancibia Clavel, Enrique Lautaro y otros, Recurso del Hecho Causa 259, [2004] Corte Suprema de Justicia de la Nación
- **Miguel Osvaldo Etcheolatz** 2251/06, [2006] Tribunal Oral en lo Criminal Federal (La Plata)

- **Eduardo Harquindegu y otro** Causa 35/799, [2004] Cámara Nacional de Apelaciones en lo Criminal y Correccional Federal de la Capital Federal

- **Sr Fiscal General solicita des archivo de causa que tramitaron por art 10 ley 23.049** S, 387, XLIII, [2007] Corte Suprema de Justicia de la Nación

- **Menéndez Luciano Benjamin, Rodríguez Hermes Oscar et al** [2008] Tribunal Oral en lo Criminal Federal de Córdoba No 1

- **Montoneros Case** Causa 40.201, [2007] Cámara Nacional de Apelaciones en lo Criminal y Correccional Federal

- **Cristino Nicolaides y otros** Causa 31369, [2000] Cámara Nacional de Apelaciones en lo Criminal y Correccional Federal de la Capital Federal

- **Simón, Julio Héctor y otros s/ privación ilegítima de la libertad, etc** Causa 17.768, [2005] Corte Suprema de Justicia de la Nación


- **Jorge Rafael Videla y Emilio Eduardo Massera** 13/84, [2007] Cámara Nacional de Apelaciones en lo Criminal y Correccional Federal de Buenos Aires

- **Jorge Rafael Videla y Emilio Eduardo Massera s/rec de casación** 8262, [2009] Cámara Nacional de Casación

**Canada**

- *R v ADH* (2013) 28 SCC (Supreme Court of Canada)

- *R v Amar* [2010] ONCA 858 (Ontaria Court of Appeal)

- *Re Application Under s 83.28 of the Criminal Code* 21 CR, 2 SCR 248

- *R v Ball* (2011) 82 CR (6th) 72 (British Columbia Court of Appeals)

- *R v Beatty* (2008) 1 SCR 49 (Supreme Court of Canada)

- *R v Berryman* (1990) 78 CR (3d) 376 (British Columbia Court of Appeal)

- *R v Briscoe* (2010) 1 SCR 411 (Supreme Court of Canada)
List of Authorities

- *Chow Bew v The Queen* [1956] SCR 124 (Supreme Court of Canada)
- *Papalia v The Queen, The Queen v Cotroni* (1979) 2 SCR 256 (Supreme Court of Canada)
- *R v Creighton* 91, 3 SCR 3
- *R v Deutsch* (1986) 27 CCC 385 (Supreme Court of Canada)
- *R v De Sousa* (1992) 2 SCR 944 (Supreme Court of Canada)
- *Dunlop and Sylvester v R* (1979) 47 CCC (2d) 93 (Supreme Court of Canada)
- *The United States v Dynar* (1997) 2 SCR 462 (Supreme Court of Canada)
- *Ezokola v Canada (Citizenship and Immigration)* 34470, [2013] SCC 40
- *R v Finlay* (1993) 3 SCR 103 (Supreme Court of Canada)
- *Regina v Finta* (1994) 1 SCR 701 (Supreme Court of Canada)
- *R v Glabisz* (1979) 47 CCC (2d) 232 (British Columbia Court of Appeal)
- *R v Gosset* (1993) 3 SCR 76 (Supreme Court of Canada)
- *R v Grewall, Grewall and Toor* (2001) 48 BCSC (Supreme Court of British Columbia)
- *R v Greyeyes* (1993) 3 SCR 76 (Supreme Court of Canada)
- *R v Hamilton* S.C.J. No. 48, 2 SCR 432
- *R v Hibbert* (1995) 99 CCC (3d) 193 (Supreme Court of Canada)
- *R v Hundal* (1993) 1 SCR 867 (Supreme Court of Canada)
- *R v Hughes* [2011] BCCA 220 (British Columbia Court of Appeal)
- *R v Jackson* S.C.J. No 134, 4 SCR 573
- *R v Laurencelle* B.C.J. No. 2151, 28 CR (5th) 157
- *R v Logan* (1990) 2 SCR 731 (Supreme Court of Canada)
- *R v Lucas* 25177, 1 SCR 439
- *R v Martineau* (1990) 2 SCR 633 (Supreme Court of Canada)
- *Regina v MacFadden* (1971) 16 CRNS 251 (New Brunswick Supreme Court)
- *Regina v Mills, Hylton, Dennis* [2013] ONSC 5051 (Ontario Superior Court of Justice)
- *Regina v Moore* O.J. No. 134, 15 CCC (3d) 541
- *R v Morgan* (1993) 80 CCC (3d) 16 (Ontario Court of Appeals)
- *Reference re Motor Vehicle Act (British Colombia) s 94(2)* S.C.J. No. 73, 2 SCR 486
- *Mugasera v Canada (Minister of Citizenship and Immigration)* (Supreme Court of Canada, 28 June 2005)
- *R v Naglik* (1993) 3 SCR 122 (Supreme Court of Canada)
- *R v Nova Scotia Pharmaceutical Society* (1992) 2 SCR 606 (Supreme Court of Canada)
- *R v O'Brien* (1954) 110 CCC 1 (Supreme Court of Canada)
- *R v Pacquette* (1976) 30 CCC (2d) 417 (Supreme Court of Canada)
- *R v Pappajohn* (1980) 2 SCR 120 (Supreme Court of Canada)
- *R v Pickton* (2010) 2 SCR 98 (Supreme Court of Canada)
- *R v Roach* (2010) 2 SCR 98 (Supreme Court of Canada)
- *R v Ryan* 34272, 1 SCR 14
- *R v Sansregret* [1985] SCR 570 (Supreme Court of Canada)
- *R v Sheppe* S.C.J. No. 39, 2 SCR 22
- *R v Sault Ste Marie (City)* S.C.J. No. 59, 2 SCR 1299
- *R v Simpson* (1988) 38 CCC (3d) 481 (Supreme Court of Canada)
- *R v Thatcher* S.C.J. No. 22, 1 SCR 652
- *R v Théroux* (1993) 2 SCR 5 (Supreme Court of Canada)
- *R v Vaillancourt* (1987) 2 SCR 636 (Supreme Court of Canada)
- *R v Wholesale Travel Inc* S.C.J. No. 79, 3 SCR 154
- *Zazai v Canada (Minister of Citizenship and Immigration)* (2005) 2 FCR 78 (Federal Court of Canada)
- *Zazai v Canada (Minister of Citizenship and Immigration)* [2005] FCA 303 (Federal Court of Canada)

**Germany**

- *Schuldprinzip* [1952] BGSt 2 194 (Bundesgerichtshof Strafkammer)
- *Staschinsky* StE 4/62
- *Berlin Wall II* 5 StR 632/98
List of Authorities

- **Apothek** 1 StR 453/02
- **Verfahrenseinstellung** BGH 5 Str 145/03
- **Betrug** 2 StR 385/07
- **Demjanjuk Judgment** [2011] 1 Ks 115 Js 12496/08 (Landgericht Munchen)

USA

- **The State v Akers** (1979) 400 A2d 38 (Supreme Court of New Hampshire)
- **United States v Alvarez** (1985) 755 F2d 830 (Federal Court of Appeals, 11th Circuit)
- **Backun v United States** (1940) 112 F2d 635 (Fourth Circuit Appeals Court)
- **Blanton v City of North Las Vegas** (1989) 489 US 538 (Supreme Court of the United States)
- **Bolden v State** (2005) 124 P3d 191 (Nevada Supreme Court)
- **State v Bridges** (1993) 133 NJ 447 (New Jersey Court of Appeals)
- **United States v Bruno** (1939) 100 F 2d 921 (Federal Court of Appeals, 2nd Circuit)
- **State v Carbone** (1952) 10 NJ 329 (Appeals Court of New Jersey)
- **The State v Curry** (2006) 636 SE2d 649 (South Carolina Court of Appeals) (hereinafter Curry)
- **The People v Croy** (1985) 41 Cal 3d 1 (California Supreme Court)
- **The State v Davis** (1989) 182 W Va 482 (West Virginia Supreme Court of Appeals)
- **Direct Sales Co v United States** (1943) 219 US 703 (Supreme Court of the United States)
- **Duncan v Louisiana** (1968) 391 US 145 (Supreme Court of the United States)
- **United States v Falcone** (1940) 311 US 205 (Supreme Court of the United States)
- **The United States v Feola** (1975) 420 US 671 (Supreme Court of the United States)
- **United States v Garcia** (1998) 151 F3d 1243 (Federal Court of Appeals, 9th Circuit)
- **The State v Gladstone** (1970) 78 Wash 2d 306 (Supreme Court of Washington)
- **Griffin v The State** (1970) 455 SW 2d 882 (Supreme Court of Arkansas)
- **The State v Guminga** (1986) 395 NW2d 344 (Supreme Court of Minnesota)
- Harrison v The United States (1925) 7 F2d 259 (Circuit Court of Appeals, Second Circuit)
- The State v Hayes (1891) 105 Mo 76 (Supreme Court of Missouri)
- Hicks v The United States (1893) 150 US 442 (Supreme Court of the United States)
- Interstate Circuit, Inc v United States (1939) 306 US 208 (Supreme Court of the United States)
- United States v James (1976) 528 F2d 999 (Federal Court of Appeals, Fifth Circuit)
- United States v Jimenez Recio (2003) 537 US 270 (Supreme Court of the United States)
- Kotteakos v United States (1946) 328 US 750 (Supreme Court of the United States)
- Krulewitch v United States 366, (1949) 366 US 440
- The People v Lauria (1967) 251 Cal App 2d 471 (California District Court of Appeals)
- The People v Luparello (1987) 187 Cal App 3d 410 (California Court of Appeal, 4th District)
- People v McGee (1979) 49 NY 2d 48 (New York Court of Appeals)
- The State v McKeeown (1979) 23 Wash App 582 (Washington Court of Appeals)
- Morrison v California (1934) 291 US 82 (United States Supreme Court)
- United States v Moussaoui 1:01CR00455-001, (2006) AO 245 S (Rev. 2/99) EDVA
- State v Nevarez (2005) 130 P3d 1154 (Idaho Court of Appeals)
- United States v Peoni (1938) 100 F2d 401 (Second Circuit Court of Appeals)
- The people v Prettyman (1996) 926 P2d 1013 (California District Court)
- Pinkerton v United States (1946) 328 US 640 (Supreme Court of the United States)
- Ex Parte Quirin (1942) 317 US 1 (Supreme Court of the United States)
- Roy v United States (1995) 652 A2d 1098 (Washington DC Court of Appeals)
List of Authorities

- The People v Stamp (1969) 2 Cal App 3d 203 (California Court of Appelas)
- The People v Stanciel (1992) 606 NE2d 1201 (Supreme Court of Illinois)
- State v Walton (1993) 227 Conn 32 (Connecticut Supreme Court)
- The State v Wilson (1981) 95 Wash 2d 828 (Supreme Court of Washington)
- In re Yamashita 327 US 1

Other Domestic Tribunals

- El Caso Machuca No. 23825
- Fujimori Exp. No. AV 19-2001
- Giorgianni v The Queen 473 (High Court of Australia, 1985)
- José Nino Gavazzo Pereira y otros Sentencia 036, Ficha 98-247/2006
- Manuel Rubén Abimael Guzmán Reynoso, y otros Expediente 560-03,
- Manuel Rubén Abimael Guzmán Reynoso y otros, Motion for annulment and consults R.N. no. 5385-2006
- Prosecutor v Mitar Rašević and Savo Todović Case No. X-KR/06/275
- Rex v Murphy (1837) 173 English Reports 502